IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

ARBITRATION APPEAL NO.22 OF 2006

IN

MISC.APPLICATION NO.56 OF 2006

...

M/s.Udayam Developers ...Appellant

v/s.

Shri Prabhudas Ramdas Thakur

and ors. ...Respondents

...

Mr.Akhilesh S. Dubey i/b M/s.M.Tripathi & Co. for the Appellant.

None for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 26TH JULY, 2006

P.C.:

1. By this appeal the Appellant challenges the order passed by the District Judge, Raigad dated 5-4-2006 dismissing the application filed under Section 9 of the Arbitration & Conciliation Act filed by the Appellant.

2. When it is an admitted position that the dispute arose between the parties in relation to the agreement dated 18-11-2003 and when it is an admitted position that there is an arbitration clause contained in that agreement, in stead of invoking the arbitration clause and taking steps to get an arbitrator appointed the Appellant filed a civil suit. In January, 2006 the Respondents filed an application in that civil suit pointing out that there is an arbitration agreement between the parties and therefore the civil court has to refer the parties to arbitration and can not entertain the suit. The Appellant was not disputing the position that there is an arbitration agreement between the parties, still from January, 2006 again no steps have

been taken by the Appellant for getting an arbitrator appointed. That the civil suit remains pending cannot be the ground for not taking steps for appointing an arbitrator. As a result of the judgment of the Supreme Court, it is now a settled law that interim order under Section 9 of the Act, which is in the discretion of the court can be granted only in favour of the party who has either taken all necessary steps to get an arbitrator appointed or due to sufficient cause was not in a position to take such steps, but is willing to do everything possible to have the abitrator appointed. Remedy of Section 9 is not to be allowed to used by a litigant who wants to use that remedy only for getting the interim order.

3. In this view of the matter, therefore, in my opinion, the Appellant is not entitled to any interim relief under Section 9 of the Arbitration & Conciliation Act and therefore, I find no error in the order of the District Court declining to grant interim order under Section 9 in favour of the Appellant. The appeal is, therefore, dismissed. The Appellant is directed to pay costs of this appeal to the Respondents. Costs are quantified at

Rs.10,000/-.

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